

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
)	GN Docket No. 09-51
A National Broadband Plan)	
For Our Future)	
)	
_____)	

**Reply Comments of the
District of Columbia Public Service Commission**

The District of Columbia Public Service Commission (“DCPSC”) hereby submits its reply comments in response to the Comments filed on June 8, 2009 in connection with the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Inquiry in the above-captioned proceeding.¹ The *NOI* was issued to solicit comment from all interested parties on the elements that should go into the National Broadband Plan (“NBP”) that was mandated by the U.S. Congress in the American Recovery and Reinvestment Act of 2009.² The Recovery Act requires that the FCC deliver to Congress, no later than February 17, 2010, a plan ensuring that every American has access to broadband capability and establishing clear benchmarks for meeting that goal. The plan must include:

- An analysis of the most effective and efficient mechanisms for ensuring broadband access by all people of the United States;
- A detailed strategy for achieving affordability of such service and maximum utilization of broadband infrastructure and service by the public;
- An evaluation of the status of deployment of broadband service, including progress of projects supported by the Recovery Act grants; and

¹ *A National Broadband Plan for Our Future*, GN Docket No. 09-51, Notice of Inquiry, FCC 09-31, April 8, 2009 (“*NOI*”).

² American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (“ARRA” or “Recovery Act”).

- A plan for use of broadband infrastructure and services in advancing a broad array of public interest goals.³

The Recovery Act also included appropriations of \$2.5 billion to the Department of Agriculture's Rural Utilities Service ("RUS") to create the Broadband Incentives Program ("BIP") which supports grants, loans and loan guarantees for broadband infrastructure aimed specifically at rural areas without access to high speed broadband service. In addition, the Recovery Act appropriated \$4.7 billion to the Department of Commerce's National Telecommunications and Information Administration ("NTIA") to establish a national broadband service development and expansion program called the "Broadband Technology Opportunities Program" ("BTOP"). BTOP will award grants to States (including the District of Columbia), non-profit organizations and broadband providers to fulfill the broadband development goals of the Act. RUS and NTIA published their initial Notice of Funding Availability and solicitation of applications in the Federal Register of July 9, 2009.⁴

DISCUSSION

A. The Importance of Broadband

There is virtually universal agreement within the comments filed in this Docket that access to broadband may be the defining issue in today's telecommunications and information policy regime. This is evidenced not only by the large number and variety of commenters, but also in the intensity of the expression. To some, access to broadband is an essential utility, like water or electricity.⁵ Others see it as "infused with the public interest."⁶ All commenters seem to agree that access to broadband is, and will increasingly be, essential for participation in the economic, social, and cultural life of the Twenty First Century. Indeed, it is because of the importance of access to broadband that Congress has mandated the National Broadband Plan and has appropriated over \$7 billion to extend broadband via the BIP and BTOP programs.

³ Recovery Act § 6001(k) (2).

⁴ See Fed Reg. Vol. 74, No. 130, page 33104 ("NOFA").

⁵ Public Knowledge, Media Access Project, The New America Foundation and U.S. PIRG ("Public Knowledge et al.") at 1.

⁶ Ad Hoc Telecommunications Users Committee at ii.

The DCPSC also recognizes the importance of broadband and the importance of devising a pragmatic, effective, forceful plan to deploy broadband to all Americans. We applaud the FCC for its excellent work in issuing the Notice of Inquiry, and we commend the hundreds of commenters who have provided thoughtful and insightful advice to the Commission on how the National Broadband Plan should be developed. We seek to add our views because we believe that adoption of broadband has become key to the future well-being of our city.

The District is only 67 square miles, with a population of about 600,000 residents. There are no rural areas in the District; hence we receive no Universal Service High Cost Funds and we are, by far, a net contributor to Universal Service.⁷ Our downtown areas are hubs for government offices, economists, academics, lawyers, consultants and others for whom very high speed broadband is essential. Yet, in some low-income residential areas, ordinary telephone penetration is well below the national norm.⁸ Broadband is, at best, an afterthought. In the District, this problem is more acute than in the rest of the nation. Over sixteen percent of our citizens live below the poverty level; on a national basis, about twelve percent do⁹. Thus the oft-cited “Digital Divide” threatens to keep large segments of the District population from learning to use the Internet. They will be foreclosed from employment opportunities, educational options, access to Internet-based government services, even the advantages of on-line shopping. In an increasingly digital world, the analog will fall far behind. We must do more to support the adoption of broadband in low-income households.¹⁰

⁷ The District of Columbia ratepayers contribute approximately \$33,588,000 to Universal Service Support Mechanisms and receive about \$1,191,000 in support payments. In no other jurisdiction is the ratio between what is paid in and what is received so low. See Universal Service Monitoring Report, 2008, Table 1.12 at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-287688A1.pdf (last visited July 20, 2009).

⁸ According to the FCC, household telephone penetration in the District of Columbia is 90.3%, as compared with a national percentage of 95%. See http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-291222A1.pdf (last visited July 20, 2009).

⁹ See District of Columbia Census Data at <http://projects.washingtonpost.com/2008/elections/dc/census> (last visited July 20, 2009).

¹⁰ The District has implemented a program of “Hot Spots” where free wireless Internet service is available. See <http://wifi.dc.gov>. Nevertheless, additional efforts will be required to avoid a crisis in broadband adoption.

B. Broadband Should Be A Supported Service

There appears to be increasing agreement that broadband should be among the services supported by Universal Service Support Mechanisms, at least in part, and subject to reforms and corrections.¹¹ Section 254(b) of the Communications Act (“Act”) establishes the principles according to which the states and federal government should base policies for the advancement and preservation of universal service. Among these is:

Access to advanced telecommunications and information services should be provided in all regions of the Nation.¹²

This principle is best satisfied by the inclusion of broadband within Universal Service. This was recognized by the FCC in establishing a Further Notice of Proposed Rulemaking on Universal Service and inter-carrier compensation reform last November when it proposed establishing a Pilot Program for broadband Lifeline and Link Up customers.¹³ The DCPSC urges the Commission to move forward with declaring that broadband should be a supported service within the Lifeline and Link Up programs of the Universal Service Fund.

1. Lifeline and Link Up

Another point of apparent agreement within many of the comments in this proceeding is the notion that the inclusion of broadband within the Lifeline and Link Up programs will promote the access to broadband by low-income Americans, those who can perhaps benefit most from connection to the economic, social and cultural advantages of the Internet.¹⁴ Indeed, a number of commenters have referred to the “Pilot Program” discussed in the *USF NPRM*.¹⁵

¹¹ See, e.g. National Association of State Utility Consumer Advocates (“NASUCA”) at 46; Public Knowledge et al. at 17-19; National Association of Telecommunications Officers and Advisers (“NATOA”) et al. at 22; Cricket Communications, Inc. at 7; Western Telecommunications Alliance (“WTA”) at 18; Benton Foundation at 43; Microsoft Corporation at 6; Computer and Communications Industry Association (“CCIA”) at 10-11; Vermont Department of Public Service at 3; QUALCOMM Incorporated at 18; Massachusetts Broadband Institute and Massachusetts Department of Telecommunications and Cable at 16; United States Telecom Association (“USTA”) at 16; New York Public Service Commission (“NYPSC”) et al. at 9; New Jersey Division of Rate Counsel at 29; Ad Hoc Telecommunications Users Committee at 19; AT&T Inc. at 83.

¹² 47 U.S.C. § 254 (b) (3).

¹³ *High-Cost Universal Service Support*, 24 FCC Rcd 6475 (2008), Appendices A and C (“*USF NPRM*”).

The DCPSC also supports a Pilot Program such as that proposed in the *USF NPRM*. We strongly believe that a program that includes both a “Lifeline” and a “Link Up” component will help to heal the gap between low-income and even middle-income Americans access to the Internet. The July 2009 report by the Pew Internet and American Life Project, *Home Broadband Adoption 2009*, reported that 85 percent of households with incomes in excess of \$75,000 subscribed to broadband Internet access services; however, only 35 percent of households with incomes at or below \$20,000 subscribed to broadband services.¹⁶ This gap -- the “digital divide” -- can only be breached if low-income Americans can have support that includes both Internet access service and the equipment needed to access the Internet, whether a laptop computer, a desktop computer, or a handheld device. Some commenters have previously opposed or recommended changes in the Pilot Program’s proposed equipment support.¹⁷ DCPSC fully endorses the inclusion of equipment support in the Pilot Program and believes it would be an egregious error not to include the means of access in a program designed to increase access.¹⁸ Further, as is demonstrated by the broadband equipment program promoted by Verizon as an incentive to obtain new customers for its FIOS services, this is not an undue burden on the broadband service provider.¹⁹

We also believe that three years is a reasonable period for the Pilot Program and that the \$300 million a year proposed in the *USF NPRM* is a reasonable funding amount for the Pilot Program. However, we also believe that it will be necessary to evaluate the

¹⁴ See, e.g., AT&T at 48; California Public Utilities Commission (“CPUC”) at 21; Cricket Communications at 7; WTA at 18; CCIA at 12; QUALCOMM at 18; NYPSC at 10-11.

¹⁵ See, e.g., CPUC at 21; NYPSC at 10-11; Qwest International Inc. at 15.

¹⁶ See <http://www.pewinternet.org/Reports/2009/10-Home-Broadband-Adoption-2009.aspx?r=1> (last visited July 17, 2009).

¹⁷ See, e.g. Qwest Communications International, Inc, Comments in Docket 96-45 et al., November 26, 2008 at 43.

¹⁸ The inclusion of some kind of equipment solution is supported by a number of commenters, e.g., QUALCOMM at 18; Cricket at 7, Microsoft at 6.

¹⁹ Verizon currently offers a free Compaq Mini netbook with a bundled FIOS Plan. See <http://www22.verizon.com/Residential/FIOSInternet/?LOBCode=C&PromoTCode=FIS21&PromoSrcCode=V&POEId=VU1SP7CMP=DMC-FIS21> (Last visited July 17, 2009).

Pilot Program during its implementation, and to make adjustments as needed, among which may be adjustments to funding.

This evaluation process will be critical to the success of the Pilot Program and to its continuation as a national program. The DCPSC recommends that the FCC refer matters concerning oversight and evaluation of the Pilot Program to the Federal-State Joint Board on Universal Service. This Joint Board has overseen universal service issues and has served as a forum for dialogue among the Commission, state regulators and local and regional entities. In that sense, it can achieve one of the most important aspects of the evaluation of the Pilot Program, building upon the insight and experience of state and local officials. In particular, state officials have been administering Lifeline and Link Up programs for local telephone service for many years and have unique experience in issues relating to eligibility and verification procedures. This “close to the ground” perspective provided by state officials will be essential to implementing and evaluating the Pilot Program, and to making whatever adjustments are deemed necessary before continuation as a national program. Therefore, we strongly recommend that the Commission work closely with state and local officials in developing, implementing, evaluating and continuing the refined Pilot Program on a national basis. The most efficient way of accomplishing this will be through the Joint Board on Universal Service.

We would also recommend that it be clear in the Lifeline/Link Up Pilot Program that any credit or discount or other subsidy be applicable to all broadband services, even bundled services. In other words, the Pilot Program would recognize the reality in the marketplace that providers are bundling various types of services: broadband, cable and voice all in one package. It would be wrong to create “silos” by requiring that any subsidy be applied only to a service that is exclusively broadband. Consumers, particularly those in unserved or underserved areas, should have an incentive to use broadband, even if it is included in a bundle for which a credit or discount might not normally apply. In this new environment, and certainly at this experimental stage, bundling of services should not be discouraged.

Further, the DCPSC recommends a change in the Pilot Program as it was proposed in the *USF NPRM*. There the Pilot Program would be limited to Eligible Telecommunications Carriers (“ETCs”) participating in “existing” Lifeline and Link Up

programs.²⁰ This language would prevent new ETCs, particularly those that offer wireless and broadband service, from participating in the Pilot Program. This would seriously limit consumer choice. We recommend permitting any ETC to participate in the Pilot Program.

2. Changes to Universal Service Support Mechanisms

We agree with Verizon and those other commenters who emphasize reform of the Universal Service Fund. The Commission has recognized for some time that there are serious problems with the size and extent of the high cost fund. The *USF NPRM* recognized and addressed many of these. The emergence of broadband may provide the Commission with the impetus it needs to make the substantial reforms that are required. Let us be careful not to make the same mistakes in the new environment that we did in the old. We would urge consideration of various proposals mentioned by the commenters in this proceeding. For example, we agree with the New York Public Service Commission that “consumers should not be forced to fund duplicative networks” in unserved areas.²¹ The so-called “identical support rule” should be eliminated.

Another aspect of universal service that could be improved for broadband is the E-Rate program, also known as the “Schools and Libraries” program. This fund makes discounts available to schools and libraries to assist with obtaining affordable telecommunications service and Internet access. The DCPSC believes that other community institutions and critical community facilities also can serve as “anchor tenants” in the broadband mall. Community centers, senior citizen centers, public medical facilities, community computer centers and public safety facilities should also be able to take advantage of the discounts provided through the E-Rate program. Particularly in low-income areas, these “anchors” can provide consumer education about the Internet and acquaint consumers with techniques for searching for affordable housing, employment opportunities and educational options. This may be among the “incentives for deployment to anchor institutions” suggested by the United States Telecom

²⁰ *USF NPRM*, Appendix A at ¶83; Appendix C at ¶79.

²¹ NYPSC at 9-10.

Association (“USTA”).²² We agree with USTA that programs for anchor institutions could create on-line access opportunities for those without broadband at home, while simultaneously establishing the beginnings of broadband deployment.²³ We also believe that E-Rate funding to anchor institutions should operate on the same principle as the E-Rate Program to schools and libraries; that is, institutions in low income areas should benefit proportionately more than institutions in high-income areas. Clearly, those institutions have less need for the subsidies inherent in the program.

In sum, the DC PSC believes that broadband should be a supported service within the Universal Service Fund at least with respect to Lifeline and Link Up. We support the creation of a three year Pilot Program and urge the FCC to employ the Federal/State Joint Board on Universal Service to oversee the Pilot Program. We also note that there are reforms to Universal Service programs that will help to bring the advantages of broadband to all consumers.

C. The States Have An Important Role

It is important to emphasize the role played by the States in the expansion and deployment of broadband. As noted earlier, we think oversight of the Pilot Program by a Federal/State Joint Board is essential to assuring that local geographic and demographic differences are taken into consideration and that the experience and insight of state and local officials are recognized. In addition, we suggest that the Commission implement another role for state officials: consumer protection. We take as our springboard the July 23, 2008 Resolution of the National Association of Regulatory Utility Commissioners (“NARUC”) entitled *Resolution Concerning the Communications Policy Statement*.²⁴ Concerned with consumer protection issues in the wireless services, the Resolution supports uniform national consumer protection standards, coupled with a state and federal enforcement partnership. The DCPSC believes that a similar approach to consumer protection in the broadband arena would best take advantage of the state officials’ knowledge of local consumer issues and the close relationship often found between

²² USTA at 10.

²³ *Id.* Other commenters have supported consideration of the E-Rate model; e.g., CCIA at 12; AT&T at 88; Benton Foundation at 45.

²⁴ See <http://www.naruc.org/Resolutions/TC%20Communications%Policy.pdf> (last visited July 17, 2009).

citizens and the state regulatory commission. In other areas states have successfully enforced the FCC's national consumer protection policies (such as in the areas of slamming and cramming); it is appropriate to take advantage of that expertise as we enter an era of universal broadband availability. We also suggest that the development of national consumer protection standards and the oversight of their enforcement be assigned to the Federal/State Joint Conference on Advanced Telecommunications Services. The Joint Conference was convened in 1999 as part of the FCC's efforts to ensure that advanced services are deployed as rapidly as possible to all Americans.²⁵ It is an existing entity composed of federal and state officials who are expert in broadband issues and who will be able to come quickly to the development of national consumer protection standards for broadband services including a dispute resolution process that takes into account both federal and state concerns.

Furthermore, recognizing the authority given to the states by the Broadband Data Improvement Act and the Recovery Act, we believe that the Commission should share the data it regularly collects from broadband service providers. Overly aggregating this data is not sufficient to allow the state authorities to conduct meaningful statewide broadband mapping. The FCC should provide requesting state commissions with copies of the current Form 477 submissions by wireline and wireless broadband service providers and should require those providers to file future Form 477 reports directly with the relevant state commissions. The DCPSC believes receipt of this information should be conditioned upon each state's commitment to treat such Form 477 reports as confidential and not subject to public disclosure, except as agreed by the service provider.

D. Definitions Are Problematic At This Stage

The DCPSC is particularly concerned about the affordability of broadband services for residents of the District of Columbia. The Commission sought advice on the definition of "affordability". Unfortunately, the responses to this request do not leave us with a firm view of how to measure the affordability of broadband service. We suggest that this matter be studied during the Pilot Program to establish a meaning of

²⁵ See *Federal-State Joint Conference on Advanced Telecommunications Services*, 14 FCC Rcd 17622 (1999).

“affordability” that is practical and that takes into consideration different local demographic and economic factors.

Among the other issues raised by the Commission is the problem of defining broadband capability.²⁶ Unfortunately, no single definition has emerged from the comments filed. There are various ranges of speeds offered, but we have been unable to find agreement coalescing around any particular definition. We suggest that the Commission adopt the definition used by RUS and NTIA in the July 9 NOFA:

Broadband means providing two-way data transmission speeds of at least 768 kilobits per second (kbps) downstream and at least 200 kbps upstream to end users, or providing sufficient capacity in a middle mile project to support the provision of broadband service to end users.²⁷

NTIA and RUS explain why they have adopted this definition, which in its use of the 768 kbps downstream benchmark, capitalizes on the FCC’s “Tier 1” threshold in the FCC’s broadband data collection process. According to the *NOFA*, this definition leverages FCC expertise, utilizes an established standard, facilitates the use of common broadband applications (*e.g.*, web browsing, VOIP, and one-way video), allows for cost-effective solutions for difficult-to-serve areas and is the most technologically neutral option.²⁸ In our view, this definition has the added advantage of having been adopted by RUS and NTIA. There must be a reasonable consistency among the definitions used by the three agencies responsible for the creation of the National Broadband Plan and the dispensing of over \$7 billion to bring that Plan to fruition. Using the same definition whenever possible will minimize misunderstandings and inefficiencies.

A number of commenters advocated for higher speed definitions of broadband because of the fear of defining the lowest common denominator, rather than the aspirational speed. However, the RUS/NTIA definition speaks of *at least* 768 mbps. We hope and expect that higher speed applications will quickly become the norm. Indeed,

²⁶ *NOI* at ¶ 15.

²⁷ *NOFA* at 33108.

²⁸ *NOFA* at 33130.

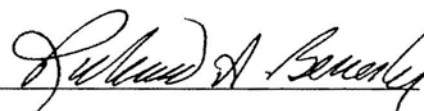
the NOFA makes it clear that grants will be awarded after consideration is given to applications that exceed the minimum speed threshold or offer superior upgradeability.²⁹ Further, in order to make the Plan technology neutral, the lower wireless speeds have to be accommodated. There will be occasions which require wireless-only, or wireless/terrestrial solutions to make broadband accessible at a reasonable economic cost. These potential solutions should not be left out of the National Broadband Plan because they fail to meet the definition of “broadband”. Further, using a higher speed broadband definition, which may be more oriented toward the business customer, would be creating a disincentive for rapid broadband deployment in residential areas. This is particularly true in low-income residential areas where the prices for high speed broadband service may be too great to encourage widespread adoption.

CONCLUSION

For the above reasons, the DCPSC supports the adoption of a National Broadband Plan which reflects the importance of broadband, which includes broadband services within the Universal Service Support Mechanisms, and which provides the states with a meaningful role in the deployment and adoption of broadband services.

Respectfully submitted,

**DISTRICT OF COLUMBIA
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²⁹ *NOFA* at 33130. (“This approach offers the greatest flexibility for the agencies and simplicity for applicants, while still expressing a preference for high-capacity projects.”).

CERTIFICATE OF SERVICE

I, Veronica W. AHERN, hereby certify that I have on this day served a copy of this Reply Comments of the District of Columbia Public Service Commission upon the following, by email:

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